

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LOWELL T. CORMIER,

Plaintiff,

v.

CITIBANK SOUTH DAKOTA, N.A., *et al.*,

Defendants..

CASE NO. C04-2538RSM

ORDER GRANTING MOTION
FOR SUMMARY JUDGMENT

I. INTRODUCTION

This matter comes before the Court on defendants, Suttell & Associates, P.S., William G. Suttell, Douglass R. Brown, and Catherine M. Kelly's, motion for summary judgment, asking this Court to dismiss plaintiff's case for failure to state an actionable claim. (Dkt. #25). The Court has construed the motion as applying only to the moving defendants.

Plaintiff Lowell T. Cormier filed his Complaint *pro se*, on behalf of himself and "all others similarly situated," against defendants Citibank South Dakota, N.A., Suttell & Associates (a law firm), three individual member attorneys of Suttell & Associates, Alliance One Receivables Management, Inc., and one Washington State Court judge, the Honorable Thomas J. Wynne. (Dkt. #1).¹ The Complaint alleges a violation of federal racketeering laws, 18 U.S.C. § § 1961-

¹ The Court notes that the Complaint appears to be a form Complaint filed by numerous *pro se* plaintiffs against Citibank in Washington, Utah, Florida, Texas, California and Ohio. (*See* Dkt. #11 at 3)

1 1962, apparently stemming from Universal Bank's efforts to collect \$18,657.00 in credit card
2 debt from plaintiff. Citibank has since been dismissed as a defendant in this case. (Dkt. #38).

3 Plaintiff has opposed defendants' motion for summary judgment, arguing that it is an
4 attempt to obstruct justice, and that "[n]o court on the face of this earth" has "the judicial power
5 to effect summary judgment." (Dkt. #32).

6 For the reasons set forth below, the Court GRANTS defendants' motion for summary
7 judgment, and dismisses plaintiff's Complaint against them.

8 **II. BACKGROUND**

9 Plaintiff alleges that defendants have violated the Racketeer Influence and Corrupt
10 Organization Act ("RICO"), 18 U.S.C. § § 1961-1962. Although it is not entirely clear from the
11 Complaint, plaintiffs appears to allege that defendants Catherine M. Kelly, William G. Suttell,
12 and Doug R. Brown, attorneys with the law firm Suttell & Associates, along with Suttell &
13 Associates itself, are engaged in a "debt collection fraud racket." (Dkt. #1 at 3). According to
14 plaintiff, the fraud racket works as follows:

15 In a back room of the Chicago Board of Trade, worthless bundles of
16 commercial paper in the form of copies of charged off debt are sold at auction
17 or from "debt purchasing" organizations . . . The typical face value of the
18 bundles often amounts to tens of millions of dollars. The original makers of
19 the loans including mortgagees and credit card debt are rarely harmed because
20 they most often have hypothecated the loan and have risked nothing. Actors
21 up the line from such artists as Catherine M. Kelley then break apart the
22 bundles and resell the worthless commercial paper in clusters based on who the
23 original creditor is and what the geographic location of the origin of the
24 individual copies. Artists such as Catherine M. Kelly are the actual "end user"
25 holders in due course although typically in the scam, artists such as SUTTELL
26 & ASSOCIATES invest as little as 75 cents on the hundred dollar face amount
27 for the worthless commercial paper, then allege they are third party debt
28 collectors attempting to collect for the original maker of the loan. Enterprises
such as SUTTELL & ASSOCIATES, in turn, mark up the worthless
commercial paper and resell to artists such as Kelley, who, for very small
investment, use threat, coercion, intimidation, and deception to defraud and
extort money and property from parties such as Patsy D. Cormier.

(Dkt. #1 at 3-4).

25 Plaintiff also apparently alleges that Catherine M. Kelley subjected him to "sham legal
26 proceedings" and that Judge Wynne was either "'on the take'" and "receiving kickbacks and
27 bribes from Kelley," or lacked "both the ethical and professional integrity to make decisions
28

1 affecting other people's lives." (Dkt. #1 at 4). Plaintiff further alleges that Suttell & Associates
2 and Ms. Kelley are guilty of fraud and extortion because Ms. Kelly filed a "fraudulent security
3 instrument" alleging that plaintiff was indebted to Citibank in the amount of \$18,657.00 (Dkt. #1
4 at 4-5).

5 Plaintiff claims that as a result of these actions, he has been "deprived of business
6 opportunities and been damaged in [his] business enterprises." (Dkt. #1 at 7). He asks the Court
7 to order the dissolution of Citibank South Dakota, N.A. and Suttell & Associates, and direct the
8 defendants to pay plaintiff and "others similarly situated" unspecified damages in the amount of
9 "not less than three times the collective sums of property and losses to businesses of all who are
10 similarly situated." (Dkt. #1 at 10).

11 III. DISCUSSION

12 A. Summary Judgment Standard

13 Summary judgment is proper where "the pleadings, depositions, answers to
14 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
15 genuine issue as to any material fact and that the moving party is entitled to judgment as a matter
16 of law." Fed. R. Civ. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). The
17 Court must draw all reasonable inferences in favor of the non-moving party. *See F.D.I.C. v.*
18 *O'Melveny & Meyers*, 969 F.2d 744, 747 (9th Cir. 1992), *rev'd on other grounds*, 512 U.S. 79
19 (1994). The moving party has the burden of demonstrating the absence of a genuine issue of
20 material fact for trial. *See Anderson*, 477 U.S. at 257. Mere disagreement, or the bald assertion
21 that a genuine issue of material fact exists, no longer precludes the use of summary judgment.
22 *See California Architectural Bldg. Prods., Inc., v. Franciscan Ceramics, Inc.*, 818 F.2d 1466,
23 1468 (9th Cir. 1987).

24 Genuine factual issues are those for which the evidence is such that "a reasonable jury
25 could return a verdict for the non-moving party." *Anderson*, 477 U.S. at 248. Material facts are
26 those which might affect the outcome of the suit under governing law. *See id.* In ruling on
27 summary judgment, a court does not weigh evidence to determine the truth of the matter, but
28 "only determine[s] whether there is a genuine issue for trial." *Crane v. Conoco, Inc.*, 41 F.3d

1 547, 549 (9th Cir. 1994) (citing *O'Melveny & Meyers*, 969 F.2d at 747).

2 *B. Alleged RICO Violations*

3 Defendants argue that plaintiff's complaint should be dismissed for failure to state a claim
4 upon which relief can be granted. (Dkt. #31). The Court agrees. Plaintiff's Complaint offers no
5 facts to support his claims, only conclusions and unsupported allegations.

6 Consequently, plaintiff has failed to state a RICO claim against defendants. In order to
7 succeed on his RICO claim, plaintiff must establish (1) the conduct (2) of an enterprise (3)
8 through a pattern (4) of racketeering activity. *Smith v. Jackson*, 84 F.3d 1213, 1217 (9th Cir.
9 1996). "Enterprise" is defined as "any individual, partnership, corporation, association, or other
10 legal entity, and any union or group of individuals associated in fact although not a legal entity".
11 18 U.S.C. § 1961(4). "Racketeering activity" is defined as (1) any act or threat involving, *inter*
12 *alia*, extortion, which is chargeable under State law and punishable by imprisonment for more
13 than one year; or (2) any act which is indictable under certain provisions of Title 18. 18 U.S.C. §
14 1961(1) and (5).

15 The Complaint fails to establish any elements of a RICO claim. First, plaintiff has failed
16 to establish that any of the defendants is an enterprise as defined under the RICO Act. Plaintiff's
17 Complaint focuses on the activities of certain attorneys and judges apparently involved in
18 collection actions against plaintiff. The allegations that defendant attorneys may or may not be
19 members of the Washington State Bar Association does not prove that they have any ongoing
20 organization or unit within a structure.

21 Second, plaintiff has failed to establish a pattern of racketeering activity. Although
22 plaintiff alleges that Ms. Kelley, Mr. Suttell and Mr. Brown, and Suttell & Associates have filed
23 fraudulent security instruments, plaintiff alleges no facts supporting why or how these filings
24 constitute illegal conduct under the RICO Act. Plaintiff also fails to identify any specific "fraud"
25 or "extortion" within the scope of the RICO Act. This failure also violates Rule 9(b) of the
26 Federal Rules of Civil Procedure which requires that plaintiff raise any allegations with
27 particularity. In this case, he must establish the four elements of a RICO claim: 1) two or more
28 predicate offenses; (2) the existence of an enterprise; (3) a nexus between the pattern of

1 racketeering activity and the enterprise; and (4) an injury to business. *See H.J. Inc. v.*
2 *Northwestern Bell Telephone Co.*, 492 U.S. 229, 237-38 (1989); *Snowden v. Lexmark Int'l*, 237
3 F.3d 620, 621 (6th Cir. 2001). Plaintiff has established none of those elements. Although
4 plaintiff may not agree that he owes money to Citibank, he has not alleged any activity by the
5 defendant attorneys or defendant law firm that is indictable under the RICO Act.

6 Finally, plaintiff alleges no facts establishing an injury to business as required by the
7 RICO Act. Plaintiff identifies no money actually paid to Citibank, Ms. Kelley, Mr. Suttell, Mr.
8 Brown or Suttell & Associates, nor does he identify any personal business that has been harmed
9 by the alleged actions of defendants.

10 While plaintiff has opposed the motion for summary judgment, he addresses none of the
11 legal arguments raised by defendants. (*See* Dkt. #35). Instead, he engages in a personal attack
12 on the moving attorney, going so far as to call for sanctions against him, apparently all based on
13 his belief that this Court may not grant summary judgment in his case because the Court must
14 accept his allegations as true. (Dkt. #35 at 2-3). Unfortunately for plaintiff, that is simply
15 incorrect. Accordingly, for all of the reasons set forth above, the Court agrees that plaintiff has
16 failed to state any actionable claim against defendants.

17 *C. Rule 11 Sanctions*

18 Defendants have requested that this Court impose Rule 11 sanctions against plaintiff for
19 filing a frivolous Complaint. That issue, however, was not fully briefed. Accordingly, the Court
20 will not address that request at this time. However, nothing prevents defendants from renewing
21 their request by filing a properly noted motion for sanctions, along with the supportive legal
22 briefing.

23 *D. Remaining Parties*

24 The Court notes that defendants Alliance One Receivables Management, Inc. and the
25 Honorable Thomas J. Wynne, have failed to join in the instant motion for summary judgment,
26 and have not moved for dismissal on their own in this case. Accordingly, this case will proceed
27 against them, and the Court will enter a Scheduling Order containing a trial date and pre-trial
28 deadlines shortly.

IV. CONCLUSION

Based on the analysis set forth above, the Court GRANTS defendants' Motion for Summary Judgment (Dkt. #25), and DISMISSES the Complaint against Suttell & Associates, P.S., William G. Suttell, Douglass R. Brown, and Catherine M. Kelley.

The Clerk is directed to send copies of this Order to plaintiff and all counsel of record.

DATED this 15 day of June, 2005.

/s/ Ricardo S. Martinez
RICARDO S. MARTINEZ
United States District Judge